



DOCKET FILE COPY ORIGINAL

FCC MAIL ROOM

FEB 16 2001

RECEIVED

NATIONAL  
ASSOCIATION OF  
INDEPENDENT  
SCHOOLS

February 13, 2001

Magalie Roman Salas  
Office of the Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

1620 L STREET, NW  
WASHINGTON, D.C. 20036-5605  
TELEPHONE (202) 973-9700  
FAX (202) 973-9790

Attention: CC Docket No. 96-45, FCC 01-21  
Re: Notice of Proposed Rulemaking

Dear Ms. Salas:

Enclosed please find one copy of the comments electronically filed by the National Association of Independent Schools in the comment period for the above referenced Notice of Proposed Rulemaking. This copy is only sent to ensure that the electronic filing was properly received.

Thank you for your consideration. Please do not hesitate to contact me if the electronic filing was not properly received, or if you have any problems or questions.

Sincerely,

Debra A. Podurgiel  
Assistant Director, Regulatory Affairs  
Government Relations

Enclosure

No. of Copies rec'd \_\_\_\_\_  
List A B C D E



FCC MAIL ROOM

FEB 16 2001

RECEIVED

NATIONAL  
ASSOCIATION OF  
INDEPENDENT  
SCHOOLS

February 13, 2001

Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Attention: CC Docket No. 96-45, FCC 01-21  
Re: Notice of Proposed Rulemaking

1620 L STREET, NW  
WASHINGTON, D.C. 20036-5605  
TELEPHONE (202) 973-9700  
FAX (202) 973-9790

Dear Sir or Madam:

The National Association of Independent Schools ("NAIS") is writing to express several areas of concern with respect to the issues raised by the CHIP Act, as it affects section 254 of the Communications Act of 1934, as amended. The FCC requested comments on a few specific issues in its recent Further Notice of Proposed Rulemaking, some of which are addressed below. NAIS also wishes to call the FCC's attention to two other issues not specifically raised.

NAIS is a voluntary membership organization of over 1,100 private, independent, elementary, and secondary schools and association in the United States and abroad. It represents approximately 473,000 students, 48,000 teachers, and 10,000 administrators. NAIS member schools have saved over \$4 million a year through the Erate program.

#### **Use of Certification of Compliance**

NAIS agrees with the FCC that the least burdensome way to attain certification of compliance with the CHIP Act is through the forms currently used in the Erate program. In regards to funding year 5 and beyond, the proposed certification is appropriate.

However, NAIS opposes using the same proposed certification for year 4 funding. Although adding the certification to the Form 486 for year 4 funding is appropriate, those certifying should have another option. Sections 254(h)(5)(E)(i)(I) and 254(h)(6)(E)(i)(I) of the Act, as amended, provide that schools and libraries shall make their certifications of compliance "with respect to the first program funding year under this subsection following such effective date, not later than 120 days after the beginning of such program year . . ."<sup>1</sup> Funding year 4 begins on July 1, 2001; therefore, the first CHIP Act certifications pursuant to sections 254(h)(5) and (h)(6) are due on or before October 28, 2001. Schools will file their Form 486 before October 28, 2001. Because the CHIP Act only requires certification by October 28, 2001, and because many schools will need that time to come into compliance, NAIS requests that the FCC add a third option to the initial certification suggested for the Form 486. This third option should read: "I certify

---

<sup>1</sup> 47 U.S.C. §§ 254(h)(5)(E)(i)(I), (h)(6)(i)(I)

that the recipient will be in compliance with the requirements of the Children's Internet Protection Act, 42 U.S.C. § 254(h), by October 28, 2001." This language should only be found on the Form 486 for funding year 4. Once the certification has changed to the Form 471 for year 5 and beyond, this third option would no longer exist.

#### **Applicability of Timing Requirement to section 254(l)**

NAIS opposes the application of the timing requirement of section 254(h) to section 254(l). Section 254(l) is a much broader section of the statute that goes beyond the requirements of sections 254(h)(5)(B) and (C). The requirements of section 254(l) are also described in 254(h)(5)(A). In creating the timing requirement found in section 254(h)(5)(E), Congress did not refer to subsection (A) or section 254(l), while it did specifically note subsections (B) and (C). Rules of statutory construction bar including subsection (A), and therefore section 254(l), in the timing requirement. If the FCC does find that the certifications should be made simultaneously, NAIS asks that this requirement be waived for funding year 4. On a practical level, the extensive requirements of section 254(l) make it impracticable to anticipate that the Erate participants will comply with all of the requirements by October 28, 2001. For these reasons, NAIS suggests that certification of compliance with 254(l) be carried over into funding year 5 at the earliest.

#### **Remedying Noncompliance**

NAIS suggests that the Program Integrity Assurance processes already in place for Erate issues would be the appropriate way to handle any blocking and filtering problems that arise in the Erate program. This process is already in place, and familiar with the Erate.

#### **Additional Issues:**

##### **Public Hearing Requirement**

NAIS requests that the FCC issue regulations regarding the public hearing requirement found in 254(h)(5)(A) and 254(l). Section 254(h)(5)(A) reads:

An elementary or secondary school described in clause (i), or the school board, local educational agency, or other authority with responsibility for administration of the school, shall provide reasonable public notice and hold at least 1 public hearing or meeting to address the proposed Internet safety policy. In the case of an elementary or secondary school other than an elementary or secondary school as defined in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. § 8801), the notice and hearing required by this clause may be limited to those members of the public with a relationship to the school.

NAIS asks that the public hearing requirement be clarified as "a hearing or meeting, held after reasonable notice, which addresses the proposed Internet use policy, in a manner that best suits the needs of the relevant community." A semblance of this definition may be found in the last sentence of the above quoted paragraph; however, the sentence inadvertently refers to institutions that are not schools, and do not qualify for the Erate

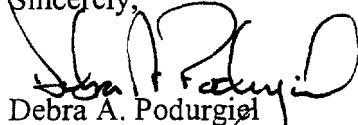
and ESEA programs. This definition is needed for independent schools because much of the community whose input is extremely relevant may be disregarded otherwise, and input from other sources not related to the school would be solicited. For example, a boarding school in New Hampshire will have students from all over the country, or the world, and may only have a handful of students from its surrounding area. The parents of the students should help determine the parameters of the Internet safety policy. Many independent day schools also have student bodies that live outside public school district lines, therefore creating the same issue of relevant input from the parents. The same issue will arise with charter schools. For these reasons, NAIS requests that the FCC issue a clarifying regulation that suits the needs of all participant schools.

**Definition of “Review” Under Sections 254(l)(B)(2) and (l)(B)(3)**

NAIS also requests clarification of the term “review” under sections 254(l)(B)(2)(A) and (l)(B)(3). The first section states “No agency or instrumentality of the United States Government may - . . . (A) review the determination made by the certifying school, school board, local educational agency, library, or other authority . . .” The latter section states “Each Internet safety policy adopted under this subsection shall be made available to the Commission, by the school, school board, local educational agency, library, or other authority responsible for adopting such Internet safety policy for purposes of review of such Internet safety policy by the Commission.” As there seems to be an inconsistency between the two, a regulation clarifying the extent of the reviewability of the Internet policy seems in order. NAIS suggests that the FCC propose a regulation similar to the practice applicable to technology plans under the Erate program. In other words: “The review by the Commission under section 254(l)(B)(3) is limited to the fundamental review of the existence and enforcement of the Internet safety policy. The Commission may not otherwise interfere with the determinations made by the relevant certifying body.” Again, as stated above, NAIS suggests that the Program Integrity Assurance processes already in place for Erate issues would be the appropriate way to handle any blocking and filtering problems that arise in the Erate program.

Thank you for consideration of our comments. For further information, please contact me at (202) 973-9716.

Sincerely,



Debra A. Podurgiel  
Assistant Director, Regulatory Affairs  
Government Relations